# In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 1180

WAYNE HUNTER CARLTON, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT*

**MEMORANDUM FOR THE UNITED STATES IN OPPOSITION**

After a jury trial in the United States District Court for the Eastern District of Arkansas, petitioner was convicted of transporting a forged check in interstate commerce, in violation of 18 U.S.C. 2314. He received a sentence of imprisonment for four years, which was later reduced to two years (Pet. A-16). The court of appeals affirmed on March 28, 1968. 391 F. 2d 684 (Pet. App. B). The petition for a writ of certiorari, filed on March 20, 1969, nearly a year later, is out of time under Rule 22(2) of the Rules of this Court.

Petitioner asserts that, after affirmance by the court of appeals, he directed his counsel to file a petition



339-441—69

for a writ of certiorari, and that counsel's failure to do so should not prejudice him. Whether or not counsel was then derelict, the present petition is inexcusably out of time. After petitioner was informed of former counsel's failure to petition, he retained new counsel on May 1, 1968. New counsel filed in the district court a motion for an extension of time to file a petition for a writ of certiorari, which was denied for lack of jurisdiction on May 16. Counsel then filed in the district court a motion for reduction of sentence, which was granted on July 17. No action on a petition for a writ of certiorari was taken in this Court until September, 1968, when a petition was mailed to the Court but returned by the Clerk because it was not accompanied by other necessary materials. Six more months passed before the instant petition was filed. Under these circumstances, the petition should be dismissed as untimely.

In any event, the petition raises no issue of merit.

1. The evidence showed that on the afternoon of November 14, 1964, petitioner purchased a record player at the Moses Melody Shop, Little Rock, Arkansas (Tr. 5, 103).[1] He attempted to pay for the item with a check in the amount of $124.40 payable to "T. F. Butler" purportedly drawn on the American Oil Company account in the Fulton National Bank, Atlanta, Georgia, and signed by "Henry L. Carpenter," as "Comptroller." Prior to accepting the check the store owner, Mr. Moses, questioned petitioner about his identity. Petitioner stated that he was

[1] The transcript of trial ("Tr.") has been filed with the Clerk of this Court.

Thomas F. Butler, produced a signed social security card in that name and said the check was a payroll check (Tr. 5–6). In fact, the American Oil Company had never maintained any checking account in the Fulton National Bank, and had never had a comptroller named Henry L. Carpenter (Tr. 22–27).

2. On November 28, petitioner, his wife, and two others, William Freeman and a female acquaintance, were staying at a motel in Monroe, Louisiana. The Monroe police department, which had information that petitioner was a parole violator, learned of his whereabouts. At approximately 1:30 p.m. Detective Johnson and another officer proceeded to the motel to arrest petitioner. They learned that rooms 711 and 713 were occupied by petitioner and Freeman. Both rooms had been registered in the name of "H. Hunter." (Tr. 38). Johnson knocked on the door of room 713, and heard a voice from within tell him to come in. Upon entering, Johnson saw two women in room 713, and observed petitioner standing in a doorway connecting rooms 713 and 711 (Tr. 39). Petitioner immediately entered room 713 and was placed under arrest. Johnson then conducted a visual inspection of room 713. He looked into room 711, and observed a typewriter, a checkwriter, and check blanks in an open attache case (Tr. 40). Johnson ascertained that petitioner and his wife occupied room 713 and that Freeman and his companion occupied room 711.

At police headquarters, the detective obtained a written consent from petitioner to search room 713 (Pet. A4). Freeman, who had been arrested on another charge in a nearby department store parking lot

shortly before petitioner's arrest (Tr. 39), signed a written consent to the search of room 711. Johnson returned to the motel rooms and seized certain items from room 711, including blank checks identical to that passed at the Moses Melody Shop in Little Rock two weeks before (Tr. 79–80, Gov't Exh. 5).

3. At trial petitioner's counsel contended that the search of the room where the blank checks were found was not incident to petitioner's arrest and was made without his consent. The court conducted a hearing out of the jury's presence, after which it ruled that the search and the seizure of the checks printed with the American Oil Company name was proper (Tr. 64–67).

There is no basis to petitioner's claim that the evidence seized in room 711 was improperly admitted against him. The record establishes that both petitioner and Freeman gave the police consent to search the rooms that they occupied. Indeed, at trial petitioner's counsel argued, "Carlton gave his waiver. He had nothing to hide. He said, 'go ahead and search it.' " Moreover, since Freeman, not petitioner, occupied room 711, Freeman's consent alone was sufficient to justify the search. See also *Alderman* v. *United States*, No. 133, O.T., 1967, decided March 10, 1969.

It is therefore respectfully submitted that the petition for a writ of certiorari should be dismissed or denied.

ERWIN N. GRISWOLD,
*Solicitor General.*

APRIL 1969.

U.S. GOVERNMENT PRINTING OFFICE: 1969